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COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUC000003

**Ex Parte: In re: Investigation of the
appropriate level of intrastate access
service prices**

HEARING EXAMINER'S RULING

March 16, 2000

On February 2, 2000, the Commission issued an order establishing an investigation of the appropriate level of intrastate access service prices for four local exchange companies ("LECs"). The Commission concluded that it should establish this new docket to consider access charge issues raised in Case Nos. PUC960021 and PUC990043 for Bell Atlantic-Virginia, Inc. ("BA-VA"). The Commission also concluded that it was time to consider the appropriate level of intrastate access charges for GTE South Incorporated ("GTE South") and for the Sprint companies, United Telephone-Southeast, Inc. ("United") and Central Telephone Company of Virginia ("Centel"). In its order, the Commission established a procedural schedule and set a public hearing. The Commission required that on or before March 31, 2000, BA-VA, GTE South, United and Centel file cost studies, using the costing methodology described in the order, demonstrating the costs for providing switched and special access services and any other cost studies using any other methodology the LECs believed the Commission should consider in this docket. The LECs were also directed to file testimony and exhibits which they intend to introduce at the hearing in this matter.

On February 11, 2000, BA-VA filed a Motion for Extension of Procedural Schedule. Therein, it stated that it requires, at a minimum, sixty additional days to complete cost studies, price analyses and testimony, now scheduled to be filed March 31, 2000. It asserts that forcing the LECs to live with the present schedule would likely lead to mistakes in the studies which would inevitably lead either to further delay later in the case or to errors in the final judgment. It asserts that the Commission is better served if the LECs are given adequate time to prepare their cost studies.

On February 16, 2000, GTE South filed its Motion for Extension. It too asserts that the current deadlines do not provide it with enough time to complete the studies required by the order and it also seeks an extension to May 30, 2000. In support of its motion GTE South filed the affidavit of Michele M. Meny. In her affidavit, Ms. Meny asserts that GTE South currently offers over 200 switched and special access services in its service territory and that individual studies for each of those services will have to be developed. She further states that special studies are required to address local loop and central office termination costs.

On February 29, 2000, AT&T Communications of Virginia, Inc. ("AT&T") filed its Response to the Motions for Extension. AT&T asserts that the motions would derail the Commission's schedule in this case. It urges the Commission to deny the motions and allow the case to proceed as scheduled. In support of that position, it cites cases in which BA-VA's access prices have been at issue and argues that BA-VA should have been prepared to address access pricing. AT&T also asserts that BA-VA should already have incremental cost information available from cost studies conducted for unbundled network elements in Case No. PUC970005. AT&T asserts that GTE South's access charges have been under scrutiny since June of 1995 when GTE filed, among other requests, proposals to change access rates. Moreover, AT&T observed that the Commission decision approving the merger of BA-VA and GTE South in Case No. PUC990100 announced that an investigation to determine the appropriate level of access charges would soon begin. AT&T asserts that the delay sought by the motion will only serve to further penalize Virginia consumers who already pay excessive access rates.

If the Commission finds BA-VA and GTE South need more time to complete their studies, AT&T also asks the Commission to reduce the existing access rates of BA-VA and GTE South across the board by 20% subject to adjustment if the reduction is ultimately found to be insufficient or excessive.

On March 3, 2000, both BA-VA and GTE South filed Replies to the Response of AT&T. BA-VA suggests that the time between filing rebuttal testimony and the hearing could be reasonably compressed and thereby minimize the delay in the start of the hearing. It also asserts that it has been under no obligation to develop and file access cost studies in previous cases so it had no reason to start those studies when its staff was already fully occupied. It further asserts that the cost studies in support of unbundled network elements rely on a different cost standard than that which is required to support switched and special access rates. Finally, in response to AT&T's request for an immediate 20% interim reduction, BA-VA argues that it is not subject to a traditional form of regulation and nothing in the BA-VA plan for alternative regulation would permit the Commission to reduce its rates without affording BA-VA an opportunity to recoup those revenues through revenue neutral rate increases.

GTE South argues that while it expected that eventually there would be an access charge proceeding in Virginia, it was not required to conduct access cost studies in anticipation. It also asserts that the cost studies used in Case No. PUC950019 are not the same ones requested by the Commission for this case. It argues that it is impossible for stale cost data to be "simply" updated and used in this case. GTE South also argues that the proposed 20% reduction is arbitrary and there is no cost information filed in this case that shows on its face that the current access charges are inappropriate. GTE South also asserts that access charges cannot be reduced without a corresponding increase to replace any implicit subsidies. Finally, it joins BA-VA to urge the Commission to compress the existing schedule between the filing of rebuttal testimony and the hearing and thereby minimize any delay in the hearing.

On March 8, 2000, AT&T filed a further reply to BA-VA and GTE-South. It continues to oppose the motions, and objects to the proposal to compress the period between the filing of rebuttal testimony and the hearing date. AT&T asserts that BA-VA historically has presented much of its case on rebuttal rather than on direct and thus compression of the time between rebuttal and the hearing could curtail the ability of AT&T and other parties to analyze the prefiled testimony. AT&T also asserts that the Commission can and should consider an immediate reduction in access charges, subject to refund. It asserts that access pricing can be considered separately and a reduction would not require a corresponding increase for other services.

I find that the motions for an extension of the procedural schedule should be granted. AT&T accurately observes that a number of cases have been docketed that, to some degree, address access pricing. Those cases, however, highlight the importance and complexity of the issue. Because access pricing is an important issue, the Commission must have the benefit of cost studies properly done, and thoroughly analyzed. The additional time sought by BA-VA and GTE South should afford them an opportunity to conduct the studies and verify their accuracy before they are filed. The additional time will also benefit the Sprint LECs. The record in this case should not be plagued by errors or a multitude of corrections. An extension of 60 days does not cause an unreasonable delay.

I also find that AT&T's request for a 20% reduction should be denied at this time. The action taken by the Commission in *Commonwealth Gas Pipeline Corporation v. Anheuser-Busch*, 233 Va. 396, was supported by that company's own cost data showing that it was overearning. There is no such data in this case.

Also pending is a joint motion filed on February 17, 2000, by Centel and United requesting that the Commission sever them from this proceeding. In support of their motion, Centel and United assert that none of the cases cited by the Commission in the order dated February 2, 2000, to support establishment of this case involved Centel or United. They therefore do not believe that an investigation of their access services prices should be done in this case. They further assert that there are a number of significant factual differences between BA-VA and GTE South, and Centel and United. They argue that the proposed merger regarding the Sprint LECs will not change the number of access lines served in Virginia, unlike the merger of BA-VA and GTE South. They also assert that unlike BA-VA and GTE South, the Sprint LECs will operate under a single identical form of alternative regulation with the rate cap ending on January 1, 2001. Sprint LECs also introduced toll dialing parity in their areas much earlier than BA-VA, thus the authority to reprice access services and the need for rate rebalancing are significantly different.

GTE South filed a response to the Sprint LECs' joint motion and does not object provided that United and Centel are severed from the case for all purposes. GTE South asserts that Sprint should either be a full participant or a non-participant and if severed from this case, it should not be permitted to participate as an interexchange carrier ("IXC").

BA-VA opposes the joint motion and asserts that the factual differences relied on in the motion are outweighed by the potential impact of this case on previous rulings of the Commission in generic proceedings in which the Sprint companies participated. It asserts that it is more efficient for the Commission to address access charges in one proceeding.

AT&T asks that the Commission determine appropriate cost-based access rates in the MCI WorldCom/Sprint merger case (Case No. PUC990244) as a condition precedent to approval of that merger if it severs United and Centel from this investigation.

On March 10, 2000, United and Centel replied to the responses. Therein, they agreed that access pricing should be addressed but urged the Commission to consider its pricing in a separate proceeding.

I find that the joint motion should be denied. The Commission explicitly included United and Centel in this case leaving only smaller independent companies for possible consideration in other proceedings. The Commission's intent is clear. With the extension in the procedural schedule granted in this Ruling, United and Centel should also have adequate time to prepare their cost studies. Accordingly,

IT IS DIRECTED THAT:

1) On or before May 30, 2000, BA-VA, GTE South, United and Centel shall file an original and twenty (20) copies of cost studies, using the costing methodology described in the Commission's February 2, 2000 Order, demonstrating their costs for providing switched and special access services, and may file an original and twenty (20) copies of cost studies using any other methodology they believe the Commission should consider;

2) On or before May 30, 2000, the LECs shall also file an original and twenty (20) copies of all testimony and exhibits they intend to introduce at the hearing on this matter. Such testimony and exhibits shall address cost studies and other factors the Commission should consider in addition to costs when making its pricing decision;

3) On or before June 27, 2000, each Protestant shall file an original and twenty (20) copies of all testimony and exhibits it intends to introduce at the hearing on this matter. An original and twenty (20) copies of any cost study to be offered by any Protestant shall be filed at this time. Protestants are not obligated to file cost studies but must file testimony and exhibits. Any interexchange carrier filing testimony and exhibits shall address in such testimony whether and to what extent Virginia consumers will benefit from any changes the Commission may order in the level of LEC charges;

4) On or before August 29, 2000, the Commission's Staff shall file an original and twenty (20) copies of a report, which may take the form of prefiled testimony, addressing the results of its investigation of the matters discussed herein;

5) On or before September 26, 2000, any party may file an original and twenty (20) copies of any rebuttal testimony they intend to introduce at the hearing on this matter;

6) All items required to be filed shall be contemporaneously served on counsel for each LEC and counsel for each Protestant;

7) The public hearing scheduled for September 6, 2000, beginning at 10:00 a.m. will be convened as scheduled for the sole purpose of hearing public witnesses;

8) A public hearing will be convened beginning at 10:00 a.m. on October 24, 2000, in the Commission's Courtroom, Second Floor, Tyler Building, 1300 E. Main Street, Richmond, Virginia, to receive all other evidence on the issues;

9) AT&T's request to reduce access charges by 20% on an interim basis subject to adjustment is denied; and

10) The joint motion of Centel and United is denied.

Deborah V. Ellenberg
Chief Hearing Examiner